IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19468 of 2004

Between:

Gutta Venkateswara Rao, S/o Krishna Murty,

Aged about 35 years, resident of Krisna District.

..... PETITIONER

AND

1 The District Level Committee, rep. by by its Chairman, Krishna District.
2 The District Collector, Krishna (Machilipatnam).
3 The District Panchayat Officer Krishna District.
4 The Inspector of Police, Jaggaiahpeta Police Station, Krishna District.
5 The Station House Officer, Chillakallu Krishna District.
6 The Village Secretary, Vedadri Village Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of *Writ of Mandamus,* declaring the action of the respondents in Proc.No.Roc.3909/03 pts.7, dt.11.10.2004 as arbitrary, illegal, unjust and unconstitutional being in violation of principles of natural justice and by an incompetent authority and set aside the same by calling for the records.

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

The Court made the following:

ORDER:

This writ petition is filed seeking a declaration that the proceedings in Roc.No.3909/2003 Pts-7, dated 11.10.2004 issued by the second respondent, District Collector, Krishna, Machilipatnam, as arbitrary, illegal and in violation of the principles of Natural Justice.

The petitioner is a lessee in respect of Vedadri Sand Reach of Jaggaiahpet Mandal and as per the lease agreement dated 28-08-2004 he is entitled to quarry the ordinary sand for a period of one year upto 08-09-2005. The petitioner states that for lifting of sand he has to go into the river 12 feet depth to lift the sand by means of boats and from the boats the sand is brought to the bank by using a country made crane operated manually with the help of 12 persons. It is also stated that the procedure adopted to lift the sand from boats is that 3 persons staying in the boat fill the bucket of the crane, 6 persons move the crane by force from boat to the river, two persons load the lorry, one person fully operates the crane by using a diesel motor and the entire operation is totally manual. It is further stated that without the use of this manual crane, lifting of the sand is not possible.

While so, the petitioner was served with the proceedings dated 05.10.2004 issued by the 2nd respondent stating that on the basis of a complaint dated 31-08-2004 alleging that the petitioner has been using mechanical poclainers for lifting the sand in violation of the Rules, the Sub-Collector, Vijayawada along with the District Panchayat Officer, Krishna District; Mandal Revenue Officer, Jaggaiahpet and Mandal Parishad Development Officer, Jaggaiahpet, inspected the said quarry and submitted a report dated 1-10-2004 which shows that the petitioner has been carrying on sand quarrying by using 30 cranes and if the cranes are not used, employment can be created for 1500-1600 people per day

in Jaggaiahpet Mandal which is declared as drought hit area and requires large scale generation of employment for labour and therefore the usage of cranes is in violation of clause 8(iv) of the conditions of the lease agreement. On the basis of the said report, the petitioner was called upon to explain the allegations on or before 06.10.2004. The petitioner states that the said show cause notice was received by him on 10-10-2004 and immediately an explanation was submitted by him on 11.10.2004. However, the impugned proceedings were passed on the same day i.e. on 11.10.2004 observing that no reply has been received from the petitioner till evening of 11.10.2004, and therefore directing that the usage of labour displacing machinery i.e. the diesel power cranes are prohibited by the lessee in the sand quarry. Accordingly, the M.R.O., Jaggaiahpet, Station House Officer, Chillakallu and the Secretary, Gram Panchayat, Vedadri were directed to prevent the usage of machinery and seize the same if they are found used in the sand quarry. The said order is under challenge in this writ petition.

While drawing my attention to the report of the Mandal Revenue Officer, Jaggaiahpet, dated 09-09-2004, the learned Counsel for the petitioner submits that the allegation that the petitioner has been using the labour displacing machinery i.e., diesel power cranes for quarrying sand is factually incorrect, and therefore the impugned order which is solely based on the said allegation is arbitrary, illegal and unjust. The further contention is that the impugned order passed by the second respondent, District Collector is without jurisdiction since under Rule 9 B (2) (b) of the A.P. Minor Mineral Concession Rules, 1966 (hereinafter referred to as 'the Rules'), the District Level Committee alone is competent to decide on any matter or problem arising during the course of implementation of the Rules. The learned counsel has also contended that at any rate since admittedly the impugned order was passed without considering the explanation submitted by the petitioner, the said order is in violation of the principles of natural justice and liable to be set aside on that ground alone.

On the other hand, the learned Government Pleader appearing for the respondent, while relying upon Rule 9-x(a) of the Rules contends that the District Collector is competent to pass appropriate orders to stop illegal mining

of sand in the District and therefore, the impugned order cannot be said to be without jurisdiction.

It is not in dispute that as per clause 8(iv) of the lease agreement, dated 28-08-2004 no quarrying of sand shall be done with the poclainer and such labour displacing machinery. It is also not in dispute that the lease was granted in exercise of the statutory power and that the agreement which is in Form-G1 in terms of Rule 9-H of the Rules is statutory in nature. Undoubtedly, the petitioner is bound by the terms and conditions of the agreement. Hence, quarrying, if any, in violation of the terms and conditions amounts to illegal mining and under Rule 9-x(a) the District Collector is empowered to stop such illegal mining. Hence, I am unable to agree with the contention of the learned Counsel for the petitioner that the impugned order is without jurisdiction.

Though the learned Counsel placed much reliance upon the report of the Mandal Revenue Officer, Jaggiahpet, dated 09-09-2004 whereunder he informed the District Panchayat Officer, Machilipatnam that he visited Vedadri village on 4-9-2004 to enquire about the lifting of sand by poclainers and machinery and expressed that the procedure being adopted by the lessee is totally manual and without use of the said manual crane the lifting of sand cannot be taken place, it appears that on the ground that the report of the Mandal Revenue Officer, Jaggaiahpet was factually incorrect, the Sub-Collector, Vijayawada was appointed as the enquiry officer with instructions to conduct surprise inspection and to report. The show-cause notice dated 5-10-2004 shows that the Sub-Collector, Vijayawada submitted a report dated 10-10-2004, according to which the lessee is carrying on quarrying operations by using 30 diesel operated cranes in contravention of the condition 8(iv) of the lease agreement. In the light of the two conflicting reports which are based on several disputed questions of fact, it is neither possible nor permissible for this Court to record any finding whether sand quarrying by the petitioner is in violation of condition 8 (iv) of the lease agreement.

It is relevant to note that though the show-cause notice was served on the petitioner on 10-10-2004 calling upon to explain the abovesaid allegation, a perusal of the impugned order shows that the said order was passed on 11-10-

2004 itself stating that no reply or response has been received from the lessee till the evening of 11-10-2004. The specific plea of the petitioner is that as a matter of fact he sent explanation on 11-10-2004 itself. The copy of the said explanation has also been filed at page 22 of the material papers in the writ petition. In the said explanation, the petitioner states that he is not indulging in quarrying by using sophisticated machinery and that manual crane is being used for only loading and unloading the sand, without which lifting of sand is not possible. The fact remains that the said explanation was not taken into consideration by the second respondent and the impugned order was passed observing that the lessee failed utilize the opportunity to explain the allegation made in the show-cause notice.

Having regard to the facts and circumstances and since the impugned order was passed in the absence of the explanation of the petitioner and particularly keeping in view that there are two conflicting reports by two authorities as to the manner and method being adopted by the petitioner for quarrying the sand, I am of the opinion that the matter requires reconsideration on the basis of the explanation dated 11-10-2004 submitted by the petitioner which is at page 22 of the material papers filed in the writ petition.

In the circumstances, without expressing any opinion as to the correctness of the allegation against the petitioner, the impugned order is set aside and the Writ Petition is disposed of with a direction to the second respondent to consider the explanation of the petitioner dated 11-10-2004 filed at page 22 of the material papers in the writ petition and to pass appropriate orders afresh in accordance with law as expeditiously as possible preferably within a period of three days from the date of receipt of a copy of this order. No costs.

Registry is directed to communicate this order to the second respondent by enclosing a copy of the explanation of the petitioner dated 11-10-2004 available at pages 22 to 24 of the material papers filed in the writ petition.

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(G. ROHINI,J)

8th December, 2004

Ksn

Note: Issue C.C. by tomorrow

B.O.

Ksn

ASSISTANT REGISTRAR

// TRUE COPY //

To

1 The Chairman,

District Level Committee, Krishna District.
2 The District Collector,

Krishna (Machilipatnam).
3 The District Panchayat Officer,

Krishna District.
4 The Inspector of Police, Jaggaiahpeta Police Station,

Krishna District.
5 The Station House Officer, Chillakallu Krishna District.
6 The Village Secretary, Vedadri Village Krishna District.

7. Two C. Cs to G.P. for Panchayati Raj & Rural Development, High

Court buildings, Hyderabad (OUT).

8. Two C.D. copies